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Paper No. 10
RFC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Integrated Device Technology, Inc.

Serial No. 75/649,329

F. Michael Sajovec of Myers Bigel Sibley & Sajovec for
Integrated Device Technology, Inc.

Rodney Dickinson, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before **Cissel**, Hohein and Holtzman, Administrative
Trademark Judges.

Opinion by Cissel, Administrative Trademark Judge:

On March 1, 1999, applicant filed the above-referenced application to register the mark "QDR" for "semiconductor devices," in Class 9. The application was based on applicant's assertion that it possessed a bona fide intention to use the mark in commerce in connection with its goods.

The Examining Attorney refused registration under Section 2(e)(1) the Lanham Act, 15 U.S.C. Section

1052(e)(1), on the ground that applicant's mark is merely descriptive of the identified goods.

In support of the refusal to register, he included excerpts from articles retrieved from an automated database of publications wherein the letters "QDR" are shown to be an acronym for the term "quad data rate," which is a computer architecture developed jointly by "bitter rivals Cypress Semiconductor Corp. and Integrated Device Technology Inc., (applicant), along with Micron Technology." This evidence indicates that the new QDR SRAM architecture for high-performance communications applications "addresses switches and routers and operates at data rates faster than 200 MHz. QDR is said to offer a significant increase in performance..., in some cases doubling it." (Excerpt is from the 1991 edition of Cahers Publishing Company's Electronic News.) The article goes on to say that "[t]he need for higher system bandwidth and multiple sources spurred QDR's development. QDR SRAMS will have two ports that independently run at double data rate, resulting in four data items per clock cycle." ("SRAMS" are "static RAMS," which are a type of computer memory that requires constant power flow to hold information. SRAMS are quicker and more dependable than dynamic RAMS, but also have some drawbacks. PC Novice Learning Series Computing

Dictionary, 1996 ed.). Another excerpt, from the 1999 addition of CMP Media Inc. Electronic Engineering Times, states that "[t]hree major SRAM vendors have pooled their efforts to develop faster parts for communications. The quad-data-rate (QDR) SRAM is to be unveiled this week by Cypress Semiconductor Corp., Integrated Device Technology Inc. and Micron Technology Inc. ... The QDR parts add speed by putting read and write functions on different ports. This, in addition to a double-data-rate architecture, allows the parts to complete four read or write operations per clock cycle. That should provide enough muscle for QDR parts to stretch up to 500 MHz speeds... [T]he QDR architecture was designed from scratch..." Another excerpted article, this one from the 1999 CMP Media, Inc. TechWeb News, quotes an analyst at In-Stat Group (not apparently affiliated with applicant or its licensees in developing QDR semiconductors) as stating that "... the market has said they need second-sourcing and compatibility to make this QDR architecture successful." The article goes on to quote applicant's marketing manager as stating that QDR will increase speeds, and that "QDR is a double-data-rate SRAM, meaning that functional data rates are actually doubled to between 333 and 500 MHz."

Based on these examples of how the letters sought to be registered are used, the Examining Attorney held that prospective purchasers of applicant's semiconductor devices would not understand "QDR" as an indication of the source of the goods, but rather, that the letters would be understood to refer descriptively "to Quad Data Rate architecture for static RAM chips, a very new technology in the field of semiconductor devices."

Applicant responded to the refusal to register with argument that the mark it seeks to register is not merely descriptive, but rather, is only suggestive in connection with the goods specified in its application because imagination, thought or knowledge would be required for purchasers of applicant's semiconductor devices to associate the letters with the particular nature or characteristics of the goods. Applicant pointed out that the articles cited in the Office Action refusing registration discuss applicant and its licensees with regard to the development of the goods to which the mark sought to be registered will be applied. Additionally, applicant argued that "marks more descriptive than applicant's have been registered," citing four registered third-party marks that it asserted "are at least as descriptive as applicant's mark."

The Examining Attorney was not persuaded by applicant's arguments. The refusal to register was made final with the second Office Action. Submitted with that action in support of the refusal were copies of nine additional excerpts retrieved from an automated database of publications and nine excerpts from websites which the Examining Attorney asserted show descriptive use of the letters "QDR" in connection with quad data rate SRAM semiconductor devices. These excerpts are similar to the ones attached to the first Office Action in that they show "QDR" used in reference to "quad-data-rate" semiconductor chips developed by applicant, Cypress Semiconductor Corp., and Micron Technology Inc. for high performance communications applications. The excerpts from what appears to be a single website of applicant, Micron and Cypress sometimes show the superscript "TM" following the letters "QDR," but on other occasions do not. The same is true for the excerpts from the individual websites of Cypress, Micron and applicant.

The Examining Attorney noted that the excerpted published articles and the website excerpts all show the letters applicant seeks to register used in reference to semiconductors being developed by applicant, Cypress and Micron, but the Examining Attorney maintained that this

does not alter the fact that "QDR" is used descriptively as an acronym for the term "quad data rate," which is also used descriptively in connection with the semiconductors applicant and its licensees are developing.

With respect to the third-party registrations cited by applicant, the Examining Attorney notes that such registrations are not determinative of the question of mere descriptiveness within the meaning of Section 2(e)(1) of the Act, and that it is irrelevant whether or not other marks have been registered for different products in view of the fact that the record in the instant application establishes that the mark applicant seeks to register is merely descriptive in connection with the goods specified in this application.

Applicant timely filed a Notice of Appeal, which was followed by an appeal brief. In addition to making the arguments which had previously been made to the Examining Attorney, applicant argues in its brief that "QDR" is not yet well known in the field of semiconductor devices. In support of this argument, applicant provided a list of entries under "QDR" from an online acronym website. Seven entries are listed, but none relates to quad data rate semiconductors.

In his timely filed brief, the Examining Attorney properly objected to our consideration of the list of acronyms submitted with applicant's appeal brief. The objection is sustained. We have not considered the list submitted with applicant's brief in our determination of the issue of mere descriptiveness because, under Trademark Rule 2.142(d), the application record for purposes of appeal closes with the filing of the Notice of Appeal. Moreover, even if we had considered the list of acronyms as if it had been timely submitted by applicant, the fact that there is no relevant entry for the acronym would not be determinative of its descriptiveness in connection with semiconductor devices. The evidence which was timely made of record by the Examining Attorney establishes that this technology is developing rapidly. Reference sources cannot be expected to keep pace with the evolution of terminology used in connection with such technology.

Turning, then, to the merits of this appeal, we hold that the record demonstrates that "QDR" is merely descriptive of semiconductor devices within the meaning of Section 2(e)(1) of Lanham Act.

A term is considered to be merely descriptive of goods within the meaning of Section 2(e)(1) of the Act if it immediately and forthwith conveys information concerning a

significant quality, characteristic, feature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered merely descriptive thereof; rather it is sufficient if the term describes a significant attribute or feature of them. Moreover, whether a term is merely descriptive is determined not in the abstract, but rather in relation to the goods for which registration is sought, the context in which it is or will be used on or in connection with those goods, and the possible significance that the term would have to the average purchaser of the goods because of the manner of its use. In re Bright-Crest Ltd., 204 USPQ 591 (TTAB 1979). Whether consumers could guess what the product is from consideration of the mark alone is not the test. In re American Greetings Corp., 226 USPQ 635 (TTAB 1985). That particular words have other meanings in other contexts is irrelevant. See In re Hycon Mfg. Co., 169 USPQ 622 (TTAB 1971). The issue is whether purchasers and/or users of the particular goods specified in the application would understand the mark to convey information about a significant aspect of the specified goods.

On the other hand, a mark is only suggestive, and hence registrable, if, when the goods bearing the mark are encountered, a multi-stage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods the mark conveys. See: In re Abcor Development Corp., supra, at 218, and In re Mayer-Beaton Corp., 223 USPQ 1347,1349 (TTAB 1984).

In the case at hand, the letters sought to be registered are merely descriptive of the goods with which applicant intends to use them because if potential purchasers and/or users of applicant's semiconductor devices were to encounter the letters "QDR" in connection with these products, they would immediately understand the letters to identify the fact that applicant's semiconductor devices feature QDR, or quad data rate, capability. The record clearly demonstrates use of these letters in the press to convey this information about the characteristics of the semiconductor devices that are being developed by applicant and its licensees. Moreover, the website excerpts from applicant and its licensees plainly show that applicant and its licensees use the letters sought to be registered in the same descriptive way, as an indication that their semiconductor devices feature quad data rate

capability. This is unquestionably a significant feature or characteristic of those products, so the that letters conveying this information are merely descriptive of the goods.

This conclusion is not altered by the fact that the references in both the publications and the website excerpts are to the semiconductor devices being developed by applicant and its licensees. That an applicant may be the first or even the only entity to use a descriptive designation does not make that designation any less descriptive. In re National Shooting Sports Foundation, Inc., 219 USPQ 1018, (TTAB 1983).

Applicant and its licensees use the letters "QDR" as an acronym for the term "quad data rate," which they use to describe the enhanced performance of the semiconductor devices they are developing. So does the press in this technical field. Any prospective purchaser and/or user of these devices, having encountered promotion of them by applicant and/or its licensees or the published accounts of their development by applicant and its licensees, would immediately and forthwith understand "QDR," in connection with semiconductor devices, to convey this significant characteristic or feature of them. Under these

Ser No. 75/649,329

circumstances, the letters "QDR" are unregistrable under Section 2(e)(1) of the Act.

Accordingly, the refusal to register is affirmed.

Ser No. 75/649,329